

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON

January 29, 2007 Session

**BARBARA MITCHELL vs. MILAN SEATING SYSTEMS, assumed name  
for INTIER AUTOMOTIVE SEATING OF AMERICA, INC. and JAMES  
FARMER, Director, Division of Workers' Compensation, Department of  
Labor, Second Injury Fund.**

**Direct Appeal from the Chancery Court for Gibson County  
No. 16231 Hon. George Ellis**

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**No. W2006-01497-SC-WCM-WC - Mailed September 26, 2007; Filed January 30, 2008**

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ROBERT E. CORLEW, SP. J., Dissenting.

Respectfully, I would find that the preponderance of the evidence does not support a causal relationship between Employment and the Employee's gradual injury which did not manifest itself until fifty-one weeks after she left work for the Employer.

The proof shows that the Employee, Barbara Mitchell, worked for the Employer, Milan Seating, for more than fifteen years, from 1986 through September 10, 2001. During her work she experienced other problems, which are not the subject of this suit, and I agree with the majority that the Employee proved causation with respect to other injuries in another suit.

Nearly a year after she ceased employment, the Employee began complaining of elbow problems. On September 4, 2002, she went to David Johnson, a physician, and complained of elbow pain. The Employee initially told Dr. Johnson that she thought her elbow was bothering her when she performed yardwork. She did not discuss with Dr. Johnson her work history at this initial visit. Later, however, the Employee felt the injury was work-related, and she subsequently reported it to the Employer. She asserts that after she left work for the Employer, she did not engage in any physical activity where she stressed the left elbow or used it repetitively.

Prior to seeing Dr. Johnson about her elbow problems, the Employee had gone to him concerning problems she was having with her thumbs, primarily on the right side. She first visited Dr. Johnson's office with her thumb injuries while she was working for the Employer, on August 24, 2001. She claimed to have symptoms on the left hand and a little numbness on the back of her left hand. She was diagnosed with severe arthritis. Dr. Johnson saw the Employee again on September 28, 2001, when she was having problems with back pain. The doctor performed a "Dexa scan",

reviewed the results with the Employee and suggested exercise and calcium supplements. She was seen by Dr. Johnson again on December 14, 2001, wherein she claimed to have sneezed and had a shooting pain down into her left hip area and that she had developed some numbness on her left side. A week later, on December 20, 2001, an MRI was performed to further evaluate her back pain. She complained to Dr. Johnson again on January of 2002 about her back pain. At this visit, the Employee also complained of popping in her knee, and she complained that her legs were aching. The Employee also continued to complain of thumb and hand pain. Dr. Johnson performed surgery on the Employee's thumb on February 18, 2002 and saw the Employee for follow-up visits on February 27 and on April 10, 2002.

On September 4, 2002, when she first complained of elbow pain, the Employee asserted that she was experiencing shooting pains from her elbow down into the ring finger of her left hand. She informed the doctor that she experienced these symptoms when she attempted any kind of yard work. Dr. Johnson testified that he performed a Tinel's test and felt that the Employee suffered from ulnar nerve entrapment syndrome in her elbow. On a subsequent visit on November 13, 2002, an ulnar nerve conduction test was suggested to be performed on November 18, 2002. On November 21, Dr. Johnson informed the Employee that she suffered from ulnar neuropathy and discussed options of injection, medication, and possible surgery.

The Employee then filed a Complaint for Workers' Compensation Benefits on December 5, 2002, wherein she alleged that on November 18, 2002, she was diagnosed with ulnar neuropathy in her left elbow. She alleged that the condition came on gradually during the course and scope of her employment with the Employer. Ironically, she never made any report to her employer and never sought any treatment during her employment. She asserts that the filing of the Complaint satisfied the legal requirements regarding notice to her employer. She also asserts that she gave separate written notice to the employer on December 9, 2002

The law requires that the causal relationship between the Employee's employment and the injury must be established by the preponderance of the expert opinions supplemented by the lay evidence. The proof of the causal connection may not be speculative, conjectural, or uncertain. Clark v. Nashville Mach. Elevator Co. Inc., 129 S.W. 3d 42, 47 (Tenn. 2004); Simpson v. H.D. Lee Co., 793 S.W. 2d 929, 931 (Tenn. 1990); Tindall v. Waring Park Ass'n., 725 S.W. 2d 935, 937 (Tenn. 1987). Absolute certainty with respect to causation is not required, however, and the Court must recognize that, in many cases, expert opinions in this area contain an element of uncertainty and speculation. Fritts v. Safety Nat'l Cas. Corp., 163 S.W. 3d 673, 678 (Tenn. 2005). When all of the medical proof is presented by deposition, we must determine the weight to be given to the expert testimony and draw our own conclusions with regard to the issues of credibility. Bohanan v. City of Knoxville, 136 S.W. 3d 621, 624 (Tenn. 2004); Krick v. City of Lawrenceburg, 945 S.W. 2d 709, 712 (Tenn. 1997).

The burden of proving each element of his cause of action rests upon the Employee in every Worker's Compensation case. Cutler-Hammer v. Crabtree, 54 S.W. 3d 748, 755 (Tenn. 2001). The

element of causation is only satisfied where the "injury has a rational, causal connection to the work," Braden v. Sears, Roebuck & Co., 833 S.W. 2d 496, 498 (Tenn. 1992).

The treating physician, Dr. Johnson, rendered a final diagnosis of ulnar neuropathy of the left elbow. He stated that the repetitious activities of the Employee at her workplace were "a possible cause" of the Employee's symptoms. He acknowledged, however, that the Employee made no mention of work activities at the time she reported her elbow injury, and that she had made no complaint prior to September 2, 2002 concerning her arm though she had a number of visits with Dr. Johnson after she left work. Dr. Johnson testified that he would have expected symptoms to have manifested themselves while the Employee was working at Milan Seating. Further, had the symptoms resulted from the Employee's work at Milan Seating, Dr. Johnson testified that he would have anticipated that symptoms would have manifested themselves sooner than one year after the Employee left her employment.

Dr. Joseph C. Boals, III performed an independent medical evaluation on the Employee on April 20, 2003.<sup>1</sup> Dr. Boals testified as to the condition of her left elbow, stating his opinion that the Employee "did have an entrapment neuropathy of the ulnar nerve but it was mild, and that's what I diagnosed." Like Dr. Johnson, Dr. Boals also felt that the Employee's condition could have been consistent with her history of sewing and using her hands, but Dr. Boals went on to state that, "What's important is she must associate the symptoms with the work itself and nothing outside the work." He further testified that it would be significant that the Employee did not register complaints of any symptoms in her left elbow within the year after leaving her employment with Milan Seating, saying that as to the question of causation, "I think it would be up to the judge to listen to that and decide."

Based on all of the evidence, I would find that the Employee has not proven the causation of her injury by a preponderance of the evidence. In the approximately fifteen years that she worked at Milan Seating, the Employee failed to complain of any elbow problems to her Employer. Dr. Johnson agreed when questioned by counsel that he would have expected symptoms to have manifested themselves while she was working at Milan Seating rather than one year after leaving her position. The proof, even from Dr. Boals, who testified for the Employee, was that it was significant that the Employee suffered no symptoms for nearly a year after leaving her employment. Dr. Boals particularly felt it was significant that the Employee did not associate her initial complaints with her employment. When I consider the testimony of both experts, I would find that that testimony does not support the Employee's theory with respect to causation of her injury. I would therefore reverse the ruling of the trial court and dismiss the action.

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**ROBERT E. CORLEW, SPECIAL JUDGE**

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<sup>1</sup>On the same date, Dr. Boals also conducted an independent evaluation of the Employee's thumbs, back and right arm.